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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 262

N. L. HUDSON, ET AL.,

Petitioners,

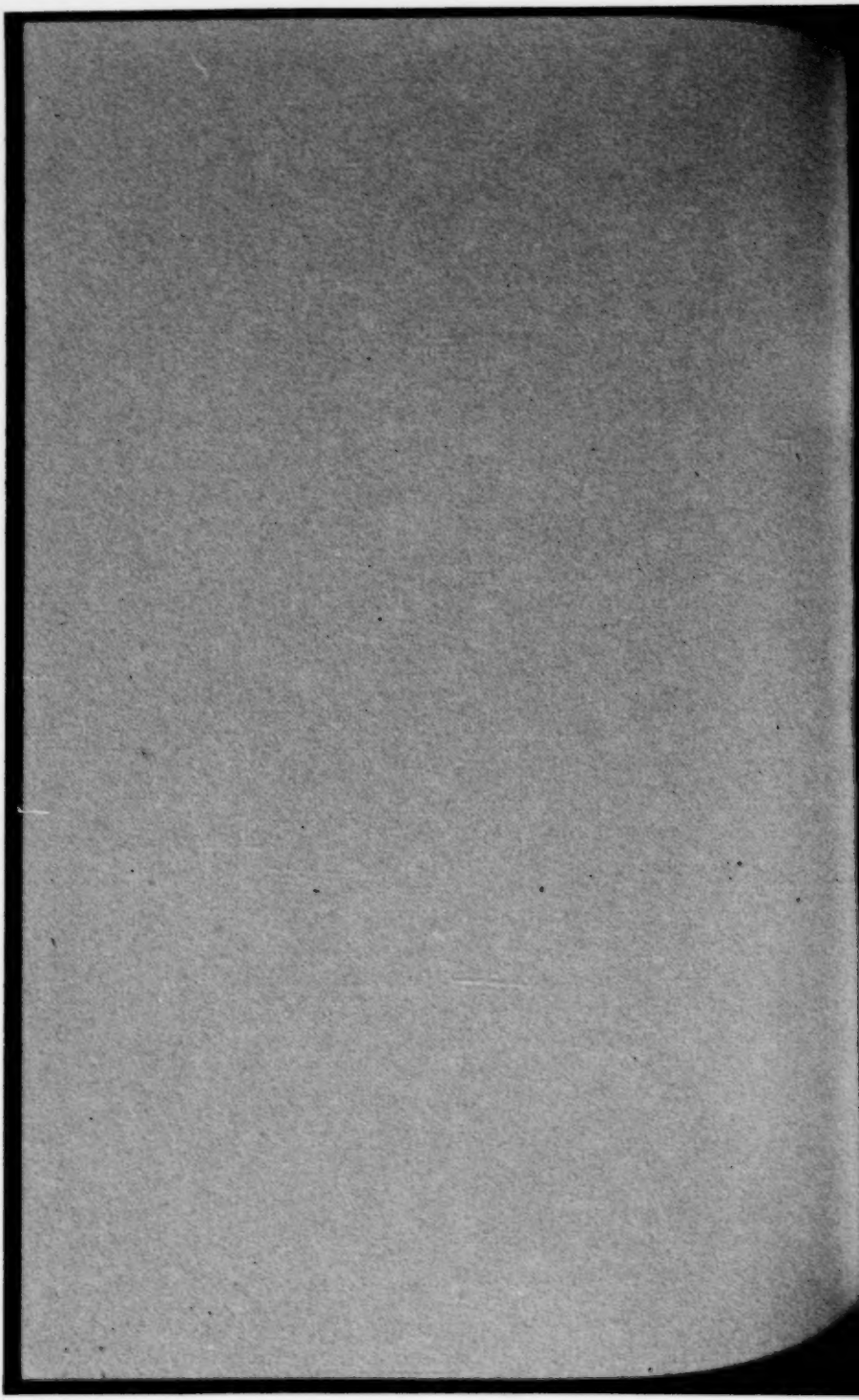
versus

GULF REFINING COMPANY, ET AL.,

Respondents.

REPLY BRIEF FOR PETITIONERS.

LAMAR F. EASTERLING,
GEORGE E. SHAW,
LESTER C. FRANKLIN,
ROBERT E. PERRY,
LESTER E. WILLS,
BEN F. CAMERON,
Solicitors for Petitioners.



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PART I.

BRIEF ON MOTION TO DISPENSE WITH PRINTING RECORD.

Respondents, Gulf Refining Company and the Ridgway group, have filed an unnamed document which we interpret to be an opposition to this Court's proceeding with the Petition for Certiorari without printing the record. This document will be so treated, and a brief reply thereto made on the assumption, although the major portion of it seeks to deal with the merits.

Should the Petition Be Dismissed Because of the Absence of Indispensable Parties?

The first point made by Gulf is that the sureties on the cost bond from the Chancery Court to the Supreme Court of Mississippi did not join in the Petition for Certiorari, and the point is made that since the judgment has become final, Certiorari should not be granted because of the absence of these sureties. Gulf relies on the case of *Hartford, etc. v. Bunn,* 285 U. S. 169, 76 L. Ed. 685. Perhaps we would not stop to mention this point if it was not reiterated and dwelt upon by Gulf at the conclusion of its main brief (Brief P. 75). The line of cases, of which that is an example, and this entire argument, so confidently submitted, falls before the new rule of this Court (Rule 48), which completely disposes of such a contention:

> "Parties interested jointly, severally, or otherwise in a judgment may join in an appeal or a petition for writ of certiorari therefrom; or, without summons and severance, any one or more of them may appeal or petition separately or any two or more of them may join in an appeal or petition."

Respondents Make No Adequate Answer to Petitioners' Motion to Dispense With Printing Record.

Petitioners set forth in their Motion to Dispense With Printing of The Record, supported by proper affidavit: (1) That Petitioners had been forced to stand the expense of a record of more than Fourteen Hundred pages to the Supreme Court of Mississippi because of the un-

reasonable failure of Respondents to agree on a shortening of the record; (2) that Petitioners had made an earnest effort to agree to shortening the record here, but Respondents would not so agree unless unnecessary portions of the record were included, and unless matter were included which was not in the record below; (3) that Petitioners were not financially able to print the record and would have to abandon their Petition if forced to do so; and, (4) that we had printed an Appendix which was a reasonably adequate record for this Court to pass on the Petition. Respondents have not denied any of those facts by any proper showing by affidavit or otherwise.

(1) There is no dispute whatever of the averments in the motion that Petitioners had been put to enormous unnecessary expense already. A record of one to two hundred pages would have been adequate to present all questions to the Supreme Court of Mississippi. The enormous record of Fourteen Hundred pages was made necessary, according to the averments of the Motion which stand undisputed, because Respondents would not enter into an agreement concerning the record there.

(2) It is established that Petitioners made an earnest and reasonable effort to stipulate to shorten the record to this Court. Paragraph 5 of the Motion, duly sworn to, sets that forth and there is no proper denial of it. Respondents seek to set forth, on pages 15 to 29 of their Response to the Motion, certain correspondence purporting to have passed between the attorneys. That correspon-

dence is not in the record and is not properly proved and, at all events, does not purport to present all of the negotiations. Assuming, however, that it is properly before the Court, these conclusions abundantly appear from the sworn Motion and these exhibits:

(a) That Petitioners went "the second mile" and offered to include far more than was necessary in the record to be printed. (Respondents' Opposition Pages 15, et seq.)

(b) That Respondents sought to exact the inclusion in the printed record of matters not in the record before the Supreme Court of Mississippi. See, for example, the statement at the top of page 22 of Respondents' Objection: "Travis, Finch and McFarland are . . . the sole persons who as attorneys were acquainted with these records who are presently alive and available"; and the statement on the following page: "There were no armed deputies present, there was no searching of any person for weapon . . .". Another example of the same thing is found on page 26 of Gulf's Objection, where Mr. Buchanan demanded inclusion of the following statement:

> "That the defendants, Paul Ellis Newell and Claudies Newell . . . appeared at the January, 1946 Term of court in said cause, by their attorneys, and announced ready for trial . . .".

There was no evidence whatever in the record to sustain any of this.

(c) From page 21 of Gulf's Objection it appears that Gulf attempted to exact an agreement from Petitioners concerning several hundred pages of a so-called trial on the merits (which agreement Petitioners could not, under any circumstances, make) concerning a matter not involved at all in the points raised by Petitioner.

(3) It is undisputed that Petitioners are not able to print the record and will have to abandon their Petition if required to print it—see Page 12 of Gulf's Objection, where it is stated:

> "Under these facts, with deference, we submit that the full record should be printed so as that the factual background could be made clear . . .".

There are some vague references to amounts paid Petitioners in settlements nearly three years ago, but it is undisputed that they cannot now finance the printing of this enormous record.

(4) There is no serious contention that the Appendix printed by Petitioners is not adequate for the presentation of all questions raised by the Petition to this Honorable Court. The copious references made by Respondents to this printed Appendix demonstrates that it contains what is necessary to pass on the Petition. It is also freely admitted by Respondents that typewritten copies of the entire record were available to them, and, of course, the entire record is filed in this Court in typewritten form.

This adequacy of Petitioners' printed Appendix is further demonstrated by the Appendix Gulf printed with its brief. It was to be presumed that Gulf, if it printed any Appendix at all, would include such additional parts of the record as it deemed essential to decision on the Petition. Yet, examination of its printed Appendices will show that Gulf devoted pages 77-99 to its Appendices B, C, D and E, which were but repetitions of what Petitioners had already printed and the last twenty-five pages (99-123) to Appendix F attempted to get before this Court a portion of the Federal Court proceedings not in this record at all. Gulf, therefore, added to Petitioners' Appendix printed as a substitute for the record only one-half page (p77).

Moreover, now that the Respondents have fully briefed the question of the granting of the Writ, and no substantial dispute has developed concerning what the record shows (except, of course, in those instances where Respondents have admittedly gone outside the typewritten record), it is respectfully submitted that the whole question is now fairly before the Court and can be considered without any hardship either to the Court or to Respondents.

PART II.

REPLY OF PETITIONERS TO RESPONDENTS' BRIEFS OPPOSING GRANTING OF THE WRIT OF CERTIORARI.

Two briefs have been filed by Respondents in opposition to the granting of the Writ, one by J. Morgan Stevens,

Esq., et al, on behalf of Respondents Lewis, et al, which will be referred to as the Lewis Brief; and the other by Garner W. Green, Esq., et al, on behalf of Gulf Refining Company, et al (it not being revealed who the others are), which will be referred to as the Gulf Brief. The ten points relied on by Petitioners in our original brief will be followed in an effort to show that Respondents have failed to furnish any adequate answer to those points.

It is conceded by Respondents that the State Court was under duty to enforce rights claimed by Petitioners under the Constitution of the United States, and that this Court has the final say where a claim is based on the denial of constitutional rights. It is not necessary, therefore, to submit further argument in support of Parts A (Pet. Brief, Page 40) and B (Pet. Brief, Page 42), and this reply is confined to Part C (Pet. Brief, Page 44), setting forth the details of the actions taken by the Mississippi Courts which amounted to denial of Petitioners' constitutional rights.

I.

In Overruling Petitioners' Motion to Dismiss Without Prejudice.

It abundantly appears (Petitioners' Brief, Pages 44, et seq.) that by statute a complaint in an equity case has a right to dismiss his suit and that "the privilege continues up to the time when the cause has been submitted to the chancellor for final decision upon the merits of the

case." In every Mississippi case cited by any litigant that right is held to be absolute, provided only the defendants have not acquired superior rights by what has transpired in the case. The chancellor evidently felt that the defendants had acquired superior rights, and the Lewis Brief seeks to sustain the chancellor's view. The Supreme Court of Mississippi, however, did not sustain the chancellor's view, but assumed that right to dismiss to exist. Gulf (Br. Pages 23-45) does not contend that the defendants had acquired any rights which would interfere with dismissal. It is reiterated therefore with confidence that the series of actions taken by the State Courts started out with a clear error by the chancellor in refusing to permit Petitioners to dismiss their suit. Petitioners had the right to invoke the jurisdiction of the Mississippi Chancery Court, and under the circumstances existing in this case,—there being no superior rights acquired by defendants—had a right to end that jurisdiction at will.

Gulf's argument deals with a wide variety of subjects (Gulf Br. Pages 25-45), but does not advance any valid contention to support the theory that Petitioners did not have the absolute right to dismiss. It insists, for instance, that Petitioners ought not to complain because they walked off and left the court below. It is clear from the whole argument that Petitioners had to refuse to proceed further or waive their absolute right to dismiss.

As was to be expected, Gulf essays (Gulf Br. P. 42, et seq.) to deal at some length with the fancied merits of

the case. They do this despite the fact that the same Brief (P. 76) concludes with the statement: "The points made by us relate to procedure alone ..... ". Gulf's Brief goes so far as to set forth, on Page 77 of its appendix, some sort of abstract of a supposed conveyance although no record reference of the supposed conveyance is made. Gulf's desperate efforts to deny Petitioners a chance to introduce their evidence on the merits rather tends to contradict the repeated lugging in of snatches of the so-called hearing on the merits. This confession of weakness on the part of Respondents is manifestly born of the knowledge that when Petitioners do get to the point where they can put in their evidence they will bring themselves squarely within the decisions of the Supreme Court of Mississippi, in one of which—*Thomasson, et al v. Kinard* (Miss. Sup. Ct. 1929), 153 Miss. 398, 121 So. 109—that court was dealing with a situation identically like this one, even to the number of years elapsing before the bringing of the suit. There, as here, it was contended that title had been acquired by adverse possession, and the Supreme Court of Mississippi repudiated the claim entirely because those claiming to hold by adverse possession were tenants at sufferance. Here is some of its language:

> "In our opinion it is firmly fixed by the decisions of our court, and a settled rule of law, that the grantee of a life tenant holding over after the death of said life tenant becomes tenant at sufferance of the heirs at law, the remaindermen . . .
>
> "May the tenant at sufferance set up a hostile claim of adverse possession based simply upon possession?

> We answer this question in the negative, though the authorities elsewhere are not in agreement with the past decisions of our court. . . .
>
> "A grantee of a life tenant, holding by virtue of a fee simple deed from the life tenant, and at the termination of the life estate continuing to hold over the lands conveyed, does not hold adversely to the life tenant."

See also *Williams v. Patterson*, 178 Miss. 120, 21 So. (2d) 477.

II.

In Denying Interlocutory Appeals and Forcing Petitioners to Go to Trial Under Threats and Armed Guards When Petitioners Were Insisting on Their Constitutional Rights and Their Right to Pursue Their Federal Actions.

At pages 49-56 of our original Brief we placed before this Court the peculiar position in which Petitioners were placed because of the requirement of Mississippi practice that we decline to proceed further if we would rely upon our dismissal without prejudice. It was contended that that very situation called for generous treatment by the Mississippi Courts in the granting of interlocutory appeal. Our opponents do not attempt any answer to that contention. In attempting to respond to our argument concerning the tense atmosphere of the chancery court of Jasper County, Mississippi, Respondents have, as anticipated, sought to predicate their answer on matters wholly outside the record. Petitioners' argument was based

entirely on the chancellor's letter taking cognizance of the threats, which letter Petitioners made a part of the record before the chancellor (R. 730, Appendix 63), and the reasonable inference to be drawn from that letter. We might have pressed the point further and have quoted from an admission made by one of the attorneys for Respondents in the Supreme Court of Mississippi, which admission appears on Page 1324 of the record on file in this Honorable Court. The attorney representing quite a few of the litigants, trying to explain the threats, had this to say:

> ". . . grew out of the natural resentment following attempts of agents of appellants to question the witnesses for the defendants. The Court can easily visualize the natural resentment following tactics on the part of appellants in trying to force defendants' witnesses to disclose information which they did not wish to disclose out of loyalty to the defendants."

We did not advert to this admission because we preferred to cast this portion of the argument entirely upon the chancellor's letter, which recognized the existence of the threats, and which was in the record.

Respondents have made no attempt to answer our argument within the confines of the record, but have, without apology, sought to go entirely without its bounds in an effort to discredit the argument concerning threats, or more accurately, the author of the arguments. In the Lewis Brief (Pages 19 and 20) the effort is made confessedly to bring in outside matter, and Gulf goes so far as to append, as Appendix F to its Brief (Pages 99-123), a

supposed transcript of what transpired in one phase of the hearing of the cases in the Federal Court. None of that was in the record in the Chancery Court of Jasper County or the Supreme Court of Mississippi and is not in the record certified by the Clerk of the Supreme Court of Mississippi and filed in this Court. Such unwarranted efforts to bolster the case of Respondents can be considered as nothing but a confession of weakness on their part.

Both of the briefs of Respondents argue at length that Petitioners' arguments concerning threats should be discounted because the threats were not mentioned by these attorneys when they were being questioned by Respondents in the Federal Court proceedings. The unfairness of such an argument is palpable when it is considered that Messrs. Cameron and Easterling were being examined by Respondents in the Federal Court proceedings only concerning one narrow issue pending in that court. From that Respondents seek to argue now that the threats were nonexistent because Petitioners' attorneys did not mention them in their testimony given on an unrelated matter.

This shameless excursion out of the record in this case would justify Petitioners in making whatever statement they might desire concerning these threats, but Petitioners specifically decline to engage in such an unauthorized proceeding. It is sufficient to say that the entire argument concerning threats, which is set forth in Petitioners' Brief bears the subscription of the same

attorney, a member of the Bar of this Court. Those arguments are not discredited in the slightest degree by anything contained in the briefs of Respondents or their illegitimate appendix.

We advanced (Pet. Br. Page 55) the argument that the learned chancellor was led into the error of refusing to permit Petitioners to dismiss without prejudice by the statements made by all of Respondents' attorneys (Appendix Page 74) that the State Court had exclusive jurisdiction. It is interesting to note that Judge Stevens, in his brief, stands by the position taken by him before the chancellor (Appendix 74):

> "We think this Court has exclusive jurisdiction. It is a suit involving property rights, seeking to remove clouds and confirm title, adjudicate between owners their respective claims to this land or property. The venue is in this county, Jasper County.
>
> "So far as I know this case involves more property rights than any suit adjudicated by your Honor, or anybody else has adjudicated in the State. The issues should be put at rest by adjudication in this court.
>
> "We do not concede and have not conceded the Federal Court has any jurisdiction. Anything done in the Federal Court is void and should be held void in my humble judgment notwithstanding the ruling."

Beginning on Page 32 of the Lewis Brief this point is argued at great length under the heading, "The Federal Court Had No Jurisdiction Because of the Pendency of this State Court Action". Judge Stevens there argues

for ten pages that there was no concurrent jurisdiction in the Federal Court and that the State Court had exclusive jurisdiction. As heretofore stated, every single attorney representing the defendants before Chancellor Neville urged that same view, and doubtless led the chancellor into error which lies at the base of all Petitioners' contentions.

But Gulf repudiates that position in its Brief before this Court. It concedes that the State Court and the Federal Court had concurrent jurisdiction—which is, of course, correct, except that Petitioners' dismissal of the State Court suit had divested that court of jurisdiction. Here is Gulf's position, as stated on Page 49 of its Brief:

> "That sought was not so **in rem** as to make the jurisdiction of either the State Court or the Federal Court exclusive of the other, but that these two suits could so operate, one in one court, the other in the other court, as that both in due course could be brought to final judgment . . ."

If Gulf had made that concession before the chancellor instead of contending (Appendix 73) that the Chancery Court had exclusive jurisdiction, perhaps the chancellor would not have been led into this fundamental error.

In arguing this point Respondents seek to take another wide excursion from the record in this case in an effort to bring before this Court the wholly unrelated contention that the United States District Court in Mississippi does not have jurisdiction of those suits because of the supposed absence of indispensable parties. The Lewis

Brief sets forth that argument at Page 33, and Gulf dwells at length on it on Pages 48 and 49, and by attempting to include, on Pages 99 et seq., the supposed excerpt from testimony taken in the United States District Court. This Court will understand that not one single fact adverted to on Page 48 of Gulf's Brief is sustained by the record, and that this entire Appendix F is wholly *dehors* this record. They even go so far as to advise this Court that the United States District Court in Mississippi is going to hear re-argument on the Motion to Dismiss.

This determined refusal to present to this Court argument based on the record is, we submit, a confession that Respondents cannot find in the record an answer to Petitioners' arguments. We respectfully decline to be drawn into a discussion based entirely on some fancied situation which this record does not disclose.

This record does disclose (R. 734) that the United States District Judge did, on March 15, 1946, enter its order overruling all motions to dismiss and abate the Federal Court actions, and this record does contain the findings of fact and conclusions of law of the Federal Court (R. 746-8), all of which were before the chancellor when he rendered his decision, from which conclusions the following is quoted:

> "That the Court has jurisdiction of the subject matter and of the parties, . . . that no indispensable parties are absent; that there is no legal impediment in the way of proceeding with the trial of said actions; and that the motions and supplemental motions of the defendants to dismiss, stay or abate the re-

spective counts of said actions, and each of them should be overruled . . .".

III.

In Proceeding to Judgment Against Petitioners on Ex Parte Hearing at a Time When the Case Was Not Triable Because of the Absence of Necessary Parties.

We made the point, on Page 56 of our Brief, that Claudies Newell and Paul Ellis Newell were necessary parties defendant, and neither of Respondents' Briefs denies this. Neither denies that the rule in Mississippi is, as quoted on Page 57 of our Brief from the Mississippi cases there cited and as announced within the last year or two:

> ". . . the Court will not proceed to a final decree as to any defendant until the cause is triable as to all the defendants . . .
>
> "Where there are several defendants, the cause is not ready for trial as to one, until ready as to all of the defendants."

There is no merit in the contention that the Newells are the only ones who could make that point. In *Paepcke Leicht, etc. Co. v. Savage,* 137 Miss. 11, 101 So. 709, the Mississippi Supreme Court was dealing with a suit to quiet title just as it was dealing with such a suit in the case before the Court. That court held there that a decree rendered without service on the parties required under the statutes relating to suits to quiet title was void and

subject to collateral attack, this being the seventh syllabus of that decision:

> "A decree which is void because of no service of process upon proper defendants may be attacked either directly or collaterally."

In *Dorsey v. Sullivan,* quoted from *supra,* the Mississippi Court reiterated the rule as late as February, 1946. That, too, was a suit to quiet title brought under the same statutes as the present case. There one Sullivan filed his bill against Cammie Dorsey and others to quiet title to real estate. Process was properly served on Cammie Dorsey, but the attempted process on other parties was invalid. Cammie Dorsey and two other defendants appealed, making the point that when the case was tried and final judgment rendered, it was not triable because defendants other than themselves were not validly served with process. The whole decision deals with the necessity of having all parties in court, and the Supreme Court of Mississippi reversed and remanded the case because parties other than those appealing had not been served with process, and the fifth syllabus epitomizes its holding thus:

> "A court of equity will not proceed to a final decree as to any defendant until the cause is triable as to all the defendants."

The sixth syllabus further summarizes the rule in Mississippi as announced in this, the last, decision of the Mississippi Court:

> "A final decree which was entered against a named defendant when other defendants were never in court

. . . would be reversed and remanded pursuant to the appeal of certain of the defendants."

The case is so clearly determinative of this point that we set forth here certain language used by the Mississippi Court at separated points in the opinion:

> "No process was ever served on some of the defendants, and the process on others was defective * * *. However, process was validly served on some others of the defendants. * * *
>
> "When final decree was entered in this case, the record was not in condition to justify it * * *.
>
> "On the same day decree pro confesso was rendered against Cammie Dorsey, Will Dorsey, and Wiley Dorsey, the appellants and others * * *. On the same day that the decree pro confesso was entered, what is termed in the record as a final decree thereon was entered against the same defendants therein * * *. It will be recalled that not all of the defendants were ever in court by any known valid form of process * * * before this final decree was entered. * * *
>
> "Where there are several defendants, the cause is not ready for trial as to one, until ready as to all of the defendants. * * *"

In that case, therefore,—cited in our original Brief (Page 57) and not differentiated at all, the Mississippi Court, dealing with precisely the same situation as confronted it in the present case, reversed where decree *pro confesso* and final decree was entered, and reversed even though the parties appealing were served with process and were properly in court. That case would

have required that this case be reversed. We so contended in our original brief and no respondent has sought to challenge that position or to question our interpretation of the effect of these holdings of the Mississippi Court.

Gulf attempts to answer this by claiming (Gulf Br. 53) that this was purely a State question and that since we voluntarily withdrew from the court we cannot take advantage of it. Here indeed is a novel contention! Admittedly the case was not a triable case when the Chancery Court of Jasper County sought to try it and enter a final judgment at the special May Term. Petitioners knew when they declined to proceed further, that they could not try the case and Respondents could not try the case. The case was no more triable than it would have been if process had never been served on any of the parties. When Petitioners declined to proceed further they were entitled to rely on the situation which existed when they entered their declination. Their rights were fixed as of that moment. If the case was not triable Petitioners had a right to decline to go to court or to have anything to do with the proceedings.

Is it possible that Respondents contend that a judgment of the Mississippi Courts is based on due process of law and equal protection of the laws, when the judgment was rendered in a case admittedly not triable, and when that judgment is to be placed in the hands of Respondent as a weapon to be used in the pending Federal Court cases? So to contend would be to fly in the teeth of what this

Court has been saying throughout its existence.—See cases cited in our original brief.

The Newells themselves do not make such a contention as that—see Lewis Brief Page 46. Nor do they contend that there is any inaccuracy in Petitioners' statement of the facts concerning the state of the record as it related to them. A brief review of that record is important in answering the Newell contention.

The record in this Court shows no service of process on either Claudies or Paul Ellis Newell. Respondents do not attempt to point out any such service. Their guardian (R. 119, Appendix 15) filed a motion to stay proceedings, in which it was set forth:

> "* * * Claudies Newell and Paul Ellis Newell are now in the military service of the United States of America and that said wards have not been legally served with process * * * and that the rights of the said Claudies Newell and Paul Ellis Newell will be prejudiced by the trial of this cause without their presence."

The Lewis Brief contends (Page 46) that Mason Newell, as guardian, filed an answer on behalf of these two minors. Here is what that answer says (R. 202, Appendix 16):

> "Defendants would show unto the Court that the wards of the defendant guardian, namely Claudies Newell and Paul Ellis Newell, are both in the military service of the United States of America serving outside of the continental limits of the United

> States of America and that said wards have not been personally or legally served with process in this cause, * * * and that this answer is not intended to waive any rights on the part of the said two wards of said guardian, but all rights which they are entitled to assert in this cause on their behalf are prayed to be reserved unto said minors and to be retained by them * * *."

The Lewis Brief (ib.) goes so far as to contend that these two minors were represented by their attorney, J. R. Buchanan, "who appeared at the January, 1946, Term of court and insisted upon a trial of the cause * * *". Now the record does not show any such fact as that. The insistence on the part of this attorney that this statement be included in the record (Gulf's Opposition to Motion to Dispense with Printing Record Page 26) was one of the reasons why the litigants could not agree on the part of the record to be printed.

But even assuming that this was true, it is certain that the solicitor for these minors could not appear for them or waive their right to be served. That is the law in Mississippi:

> "An infant can waive none of his rights, and no jurisdiction can be had over person of infant, except by issuance and service of process in manner required by Code 1906, Paragraph 3929.
>
> "If infant is not legally served with process as provided by Code 1906, 3929, appearance of his solicitor though employed by him will not bind infant."

(See first and second syllabi of decision of Supreme Court of Mississippi in 1928 in *Parker v. Smith, et al,* 150 Miss. 849, 117 So. 249.)

The general law on the subject is stated in *43 Corpus Juris Secundum,* Page 318: "An infant cannot waive personal service of process; nor can any other person do so for him;" and this Court certainly has put the subject at rest—see second syllabus of *New York Life Insurance Co. v. Bangs,* 103 U. S. 435, 26 L. Ed. 580:

> "A decree or judgment in such a case can be collaterally attacked and is void, if rendered in a case where a guardian *ad litem* had been appointed without service of process on the infant."

We repeat that this one point is decisive of this case and renders entirely void the final judgment which the Chancery Court of Jasper County sought to render against Petitioners in a case which was not then triable as to any litigant.

IV.

In Proceeding to a "Trial On The Merits" and Approving Decree on Cross-Bill Alone When Mississippi Practice Permitted Only Dismissal With Prejudice.

Here, as usual, the attitude of Respondents is one of confession and avoidance. The Lewis Brief (Page 46) seeks to escape this point by asserting that, "Petitioners are in no position to complain of the procedural steps taken after they walked out and declined to participate".

That position is, we submit, unsound. When Petitioners declined to proceed further they had a right to know that whatever happened to them would take place in strict obedience to Mississippi rules of practice. Petitioners do have a right to complain of the procedural steps taken if those steps were not in accord with accepted tenets of procedure.

Gulf attempts to answer this point (Gulf Br. P. 55-7) by the contention that what happened after Petitioners left the courtroom presents a moot question. That, too, is unsound. If what happened to Petitioners after they left the courtroom involved only dismissal and did not involve the taking up of cross-bills, they had a right to assume that the cross-bills would not be taken up. Yet the decision of the Mississippi Supreme Court in this case assumes dismissal without prejudice, and justifies judgment by default on cross-bills which, under counsel's concession, could not be taken up at all.

Gulf also takes the position (Br. P. 56) that even if the Mississippi trial court did not have a right to reach beyond dismissal and take up the cross-bills as independent pleadings, Petitioners cannot complain if the Supreme Court of Mississippi conceived that the right result was reached, even though a wrong reason was given. Gulf would further hold Petitioners forever bound by the opinion of the Supreme Court of Mississippi, and would deny us the right to invoke review by this Court because they say, "Petitioners have received every consideration whereto they were entitled * * * ".

If that position is sound, then it is true that this Court has the last say when a litigant contends that what a State does under the name of procedure does not square with what the Constitution requires to be done.

V.

In Awarding Judgment Against Petitioners on the Cross-Bill of the Ridgways.

Petitioners contended (Br. 60-2) that it was plain that the Supreme Court of Mississippi attached great importance to the Ridgway cross-bill and that this cross-bill was referred to a number of times in the decision of the Mississippi Supreme Court. That is conceded by Gulf (Gulf Br. P. 58). It is clearly inferable that the Supreme Court of Mississippi would not have reached the conclusion it did without the presence of the Ridgway cross-bill.

We made the point further that the Ridgway cross-bill was not entitled to any consideration at all because it had never been served, and no process had ever been issued or served to bring it before the Court or to require Petitioners to take any notice of it. The Lewis Brief makes no reply to this point, and Gulf's Brief (P. 58) does not claim that there was any legal service of the cross-bill, but takes the position that counsel's *ex parte* statement that it was served was accepted by the Supreme Court of Mississippi, the language of that position being in part as follows:

> "In Mississippi's Supreme Court it was there solemnly said, and is here reaffirmed by counsel at the

> bar, that this cross-bill, along with the answer whereof it is a part, was lawfully served upon Judge Lamar F. Easterling * * * and Judge Easterling before a Mississippi Court, and doubtless here will do the same, affirmed that he would not controvert in any way the declaration of counsel for Respondents that service had been lawfully made."

The Court will understand that there was never any service of this Ridgway cross-bill. Its conclusion appears at Page 455 of the record (Appendix 30). No acknowledgment of the cross-bill is there shown. The position taken is that Gulf's attorney asserts verbally that the cross-bill was served, and asserts that one of Petitioners' attorneys (Judge Easterling) does not deny that it was served.

Judge Easterling's lips are, of course, closed by the proprieties of argument which demand that the case be presented on the record. Suffice it to say that when Gulf's cross-bill was handled between the same parties (R. 400, Appendix 27), Judge Easterling promptly acknowledged in writing the service of that cross-bill and promptly demurred (R. 398, Appendix 25). No such acknowledgment appears to the Ridgway cross-bill, and Petitioners did not demur or otherwise plead with respect to it. The contrast thus presented furnishes Judge Easterling's position as far as the record will permit it to be ascertained.

Assuming, however, the absolute correctness of the quotation from Gulf's Brief, *supra*, that one of Gulf's attorneys advised Supreme Court of Mississippi verbally

that he had served a copy of the Ridgway cross-bill on one of the attorneys for Respondents, and that the last named attorney did not deny that; and assuming further that the Supreme Court of Mississippi "rejected the contention" (Gulf Br. P. 58) that such service would not be sufficient to form the basis of a decree on the Ridgway cross-bill: could the Supreme Court of Mississippi award judgment against Petitioners on such verbal representations? Not if it followed Mississippi law. The Mississippi Code of 1942, Section 1301, dealing with the right of parties through their solicitors to waive prescribed procedural requirements, recognizes such agreements only "if all the parties or their solicitors of record sign and file in the cause a written stipulation to that effect * * *".

Rule 22 of the Supreme Court of Mississippi (quoted in *Majure v. Johnson, infra*) requires:

> "No agreement between counsel will be regarded unless reduced to writing, and signed and filed by them."

The Supreme Court of Mississippi has steadfastly refused to hold litigants bound by agreements not signed by the parties or their solicitors and filed among the papers in the cause—*Mississippi, etc. Co. v. Brookhaven, etc. Co.*, 165 Miss. 820, 147 So. 814; *Majure v. Johnson*, 192 Miss. 810, 7 So. (2d) 545. The last named case refutes the novel position of Gulf in all of its aspects.

There the Supreme Court of Mississippi reversed a decree *pro confesso* taken on an amended bill. It did so even though the party against whom the decree was taken

had, through his solicitor, written a letter which it was contended waived the observance of statutory rules. The letter was never filed and made a part of the record, and the Supreme Court of Mississippi declined to let the decree *pro confesso* stand, using in part this language:

> "This letter was never filed in court or presented to the chancellor. It is no part of the record of the original suit. * * *
>
> "Even though this letter were considered an agreement of counsel, signed by them, we would be precluded from considering it under Rule 22 of this court, which reads: 'No agreement between counsel will be regarded unless reduced to writing and signed and filed by them.' Also, Section 390, Code of 1930, providing that agreements may be a substitute for orders of the chancellor in such matters as enlargement of time for filing answers, continuances, etc., 'if all the parties or their solicitors of record sign and file in the cause a written stipulation to that effect * * *'."

That is the last word of the Mississippi Supreme Court on the subject. That was the law of Mississippi at the time Petitioners declined to proceed further in the chancery court, and at the time of the decision of this case by the Mississippi Supreme Court and up to the present moment.

The Mississippi Court refused to permit Majure's property to be taken upon a decree *pro confesso* based upon a writing because that writing was not filed among the papers pursuant to its requirements. And yet Respondents argue that the Supreme Court of Mississippi has

sanctioned the taking of Petitioners' property by judgment by default on a supposed agreement neither reduced to writing nor filed with the papers. That contention, if correct, would revoke entirely constitutional requirements for due process and equal protection.

VI.

In Proceeding to Judgment on Gulf's Cross-Bill Without Giving Petitioners the Opportunity to Answer and Defend It After the Demurrer to the Cross-Bill Was Overruled and When Petitioners Had Settled With Gulf.

Gulf alone essays to reply to this ten-page argument of Petitioners (Br. 62-71). In that argument Petitioners trace carefully the statutory scheme which must be followed in Mississippi to obtain a valid decree *pro confesso*, and showed its similarity to the general law. As we gather Gulf's argument, it does not question at all our contention of non-compliance with this statutory scheme. Gulf's position may be epitomized by the following quotations brought together from pages 62-5 of its Brief:

> "Thus Petitioners got precisely what they bargained for. * * * and when they withdrew they did not intend to go away off and not come back, but they intended to sojourn at a respectful distance so that they might at their pleasure forthwith return and file an answer to this cross-bill. * * *
>
> "* * * the chancellor, we submit, did precisely what Petitioners expected, precisely what they sought to have him do, and are not now in position to com-

> plain thereof. * * * When the demurrer was overruled and the chancellor had been advised that these parties would not be back, what was the use of waiting * * *
>
> "* * * it is inconceivable that they would have again joined issue when this demurrer was overruled * * *."

Here again Respondents seem to argue that the Chancery Court of Jasper County could do anything it wanted to do after Petitioners had declined to proceed further. Among the things they infer that the chancellor had a right to do was to fail to follow the Mississippi statute requiring that Petitioners be given an opportunity to answer Gulf's cross-bill if their demurrer should be overruled. The argument seems to infer further that the chancellor had a right to decide, without affording this opportunity vouchsafed by the statutory requirements, that Petitioners did not want to contest on Gulf's cross-bill.

All of those things are based, we submit, on a complete failure to comprehend due process of law. Petitioners did not, by declining to proceed further, forfeit their right to rely on the observance of the requirements of orderly judicial procedure. Here Respondents seem to admit that orderly judicial procedure was not followed, but to argue that Petitioners had forfeited their right to rely on it. It is hardly necessary to repeat that it is highly plausible that Petitioners would have consented to litigate with Gulf alone on the narrow issues presented as between Petitioners and Gulf. There is not the slightest inference anywhere that the apprehension of Petitioners

arising from the threats extended to Gulf at all. The point is, however, that orderly procedure required that they be given the opportunity to answer Gulf's cross-bill after the demurrer was overruled. Whether they would have availed themselves of that opportunity is not decisive. Due process cannot be brushed aside with the assertion that the litigant probably would not have protected himself if due process had been accorded him. If, as Respondents seem to argue, Petitioners forfeited anything when they left the courtroom, they certainly forfeited only that which could be taken from them by the observance of accepted rules of procedure.

Gulf's response to Petitioners' argument (Br. P. 69) that Gulf did not resist Petitioners' Motion to Dismiss, places itself entirely on the quotation Gulf uses at the top of Page 67 of its Brief, which refers to the statement of Gulf's attorney with regard to the pendency of Gulf's cross-bill. That argument is entirely misleading.

Petitioners' Motion to Dismiss Without Prejudice was overruled at the January Term of court (R. 605, Appendix 30), and at that time Gulf did not raise any objection whatever, even though the other defendants did object. Gulf does not deny that. Gulf did enter the fray at the following May Term, at which the final decree was sought to be entered. The quotation at the top of Page 67 of Gulf's brief adverted, not to the January Term, but to the May Term—see Record 856-7, Appendix 72-3. Gulf seeks to answer Petitioners' argument that Gulf did not object to the Motion to Dismiss, therefore, by quoting

from what Gulf did four months later at another term of court. The argument of Gulf on this point is wholly without convincing force.

Nor does Gulf make any adequate reply to Petitioners' point, on Page 70 of our Brief, that Gulf did not amend its cross-bill so as to present the true facts to the chancellor. Without question Gulf had settled its controversy with Petitioners. There was nothing to litigate between Gulf and Petitioners because Gulf held leases both from Petitioners and Respondents. Yet Gulf did not apprise the chancellor of that fact. The chancellor acted, therefore, in awarding decree on Gulf's cross-bill, wholly without the benefit of the settlement which had been made between Gulf and Petitioners. Surely if Petitioners had been vouchsafed the chance to answer Gulf's cross-bill, this is one available defense which Petitioners would have asserted. "Due process requires that there be an opportunity to present every available defense."—*American Surety Co. v. Baldwin,* 287 U. S. 156, 77 L. Ed. 231.

VII.

In Awarding Judgment Against Petitioners and in Favor of Gulf in a Case Not Justiciable Because It Had Become Moot.

Decisions of this Court were cited on pages 71, et seq., of our Brief holding that courts will not entertain litigation which does not represent an actual judicial contest between the parties, and that litigants may not invest a court with jurisdiction so to do by their own private

agreement. No Respondent attempts to reply to those cases or to point out any property rights between Petitioners and Gulf which could form the basis for legitimate litigation. *Qui tacent clamant.* This point is, we submit, entirely valid and determinative of the case.

VIII.

In Awarding Judgment Against Petitioners on Cross-Bills Showing No Right to Relief After Original Bill Has Been Dismissed and to Which a Demurrer Had Been Interposed.

To the dozen pages of Petitioners' argument on this point (Brief 74-87) the Lewis Brief attempts no reply at all and Gulf devotes a scant two pages (Gulf Br. 69, et seq.). Gulf first quotes (Gulf Br. 70) what is supposed to be a portion of its brief before the Supreme Court of Mississippi with the confident assertion that the Supreme Court of Mississippi adopted the view there expressed. That quotation is, of course, improper because the briefs before the Supreme Court of Mississippi do not, and could not, constitute a part of the record of the case before this Court. Nor is there any indication that the Supreme Court of Mississippi accepted the supposed argument.

Here again the only reply Gulf seeks to make is that the Supreme Court of Mississippi was dealing with a purely State question, followed by the expression of apprehension on the part of Gulf that this Court would be converted "into a harbor for the consideration of every

type of question and emasculate this Court", if it should be called upon to consider constitutional rights claimed to have been denied by the Supreme Court of Mississippi. The point here, as elsewhere, is that there is no dispute whatever about Mississippi law or its provisions. Petitioners' contention is that they were denied due process of law by the failure of the Mississippi Courts to accord them the protection of the rules admitted to exist. Here, for instance, is what the Mississippi Court said about decrees on cross-bills in the late case of *Majure v. Johnson, supra:*

> "And since a pro confesso is in effect the equivalent of an answer incontestably admitting, but admitting only, the material averments of the bill, it follows, first, that no such decree can be taken while any demurrer or plea or the equivalent of either remains undisposed of * * *."

If, in truth and in fact, Gulf's cross-bill is not sufficient under Mississippi laws and under the decisions of this Court, and that fact be conceded, certainly the hands of this Court are not tied when the acts of the Mississippi Courts are challenged at every step as not in conformity with constitutional requirements.

IX.

By the Decision of the Supreme Court of Mississippi on a Point Never Presented to or Passed on by the Lower Court and Which Petitioners Never Had a Chance to Defend.

The extended argument of Petitioners (Br. Pages 87-95) is not answered, we submit, in the two and a half

pages which Gulf devotes to this point (Gulf Br. 71-3)—the Lewises making no response at all to this point. The series of decisions of this Court demonstrates incontestably that due process requires that all litigants have the opportunity to contest at each step of the proceeding the contention of his adversary as those contentions are raised in obedience to recognized procedure. If Petitioners are to be denied their property rights solely under a cross-bill, due process requires that they be faced in orderly fashion with that cross-bill so that the opportunity to defend it shall be given. Otherwise they would be victims of a springe such as Mr. Justice Holmes condemned in his immortal phraseology in *Davis v. Wechsler*, 263 U. S. 22, 68 L. Ed. 143. It is certainly inferable that Respondents have not made answer to our delineation of the cases of this Court because there is no answer. Petitioners stand denied a trial on the merits because they have been condemned for defaulting in a matter with which they were never faced.

X.

By the Holding of the Supreme Court of Mississippi That the Judgment in a Case Between Petitioners and Gulf is Res Judicata as Between Petitioners and the Lewises, et al., Not Parties to the Cross-Bills.

It is not strange that Gulf devotes less than a page to an attempt to answer our extended argument on this point (Br. P. 95-105) because this ruling does not affect Gulf at all. It is both strange and noteworthy, however, that the Lewis Brief (Lewis Br. 47-8) spends less than

a page replying to that argument and does not mention any of the decisions of this Court cited by us. It is only as the Lewises, et al, may be beneficiaries of the judgment on Gulf's cross-bill that this decision as to them may stand. Our argument on this point is, we submit, wholly unanswerable. The Mississippi cases themselves demonstrate that litigation between Gulf and Petitioners, cannot possibly bind the Lewises, et al, who were not parties to that litigation. If it will not bind the Lewises, et al, it will, of course, not bind Petitioners.

It is perfectly clear from the list of cases discussed on Pages 96, et seq., of our Brief that this Court will examine this whole question of *res judicata* and will pronounce its own judgment on it. The same thing is true of *Chase National Bank v. Norwalk,* 291 U. S. 431, 78 L. Ed. 894, and the other cases cited on Page 105 of our Brief.

Here again it is clear, we submit, that no effort is made to answer our argument because there is no answer which can be made.

CONCLUSION.

A careful analysis of the briefs filed on behalf of the Respondents reveals, we submit, that it is not seriously contended that the Mississippi Courts have not committed error in the respects claimed by us. Theirs is rather a plea of confession and avoidance. In each instance they are driven back to the position, which they constantly reiterate, that the questions at issue were questions of

state procedure and that the decision of the Mississippi Court is final. Boiled down, what they say to Petitioners is something like this:

> "It is true that you had a right to dismiss without prejudice, and that you were invited to come into the State Court and try your case under the protection of armed guards at a time when you were insisting on your right to proceed with your Federal cases, and after you were denied interlocutory appeals; it is true that the case was not triable when the final judgment was entered, and that in any event the chancery court could proceed no further than dismiss your suit with prejudice; it is true that the Supreme Court of Mississippi affirmed the decision because of the presence of the Ridgway cross-bill which had not been served, and that the demurrer to Gulf's cross-bill was overruled without giving you an opportunity to answer; it is true that when the judgment was rendered on Gulf's cross-bill, Gulf did not advise the Chancery Court that the issues between you and Gulf had been settled, and that this issue, therefore, was moot; it is true that you have been held in default for not defending a cross-bill when that situation was never presented to you, and it is true, finally, that you have been held to an adjudication of your rights with the defendants other than Gulf and Ridgway when *res judicata* does not extend to a foreclosure of your rights with those other litigants.
>
> "All of these things are true, but all of them relate to matters of practice and procedure in the Courts of Mississippi, and the decision of those courts was predicated entirely on those procedural points. The courts of Mississippi have patiently given you your day in court and you are not entitled to complain."

If that position be sound, then the Constitution is not the supreme law of the land and this Court has been doing a lot of writing in vain;—all the way from *Yick Wo v. Hopkins,* 118 U. S. 356, 30 L. Ed. 220, down to *Angel v. Bullington,* L. Ed. Advance Opinions March 10, 1947, Page 557. If that position be sound, then it is not true that every litigant is entitled to the equal protection of the laws, and that due process of law requires that he be given the benefit of adequate and lawful procedural requirements. That position completely rejects the idea that every procedural step is "fettered" by constitutional requirements, and that constitutional rights cannot "be defeated under the name of local practice"; it asserts that a state court can "sterilize federal claims by putting on the adjudication a local label"; it proclaims that a state court may "put a federal claim aside as though it were not in the litigation by the talismanic word procedure".

This Petition, we submit, presents the strongest possible claim that this Court extend to these non-resident litigants protection "by the grace of certiorari".

LAMAR F. EASTERLING,
GEORGE E. SHAW,
LESTER C. FRANKLIN,
ROBERT E. PERRY,
LESTER E. WILLS,
BEN F. CAMERON,
Solicitors for Petitioners.

This is to certify that copies of this Brief have been served on opposing counsel on this the .... day of September, 1947.

.....

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 262

N. L. HUDSON, ET AL.,

Petitioners,

vs.

GULF REFINING COMPANY, ET AL.,

Respondents

R. E. WILBOURN,
WALTER S. WELCH,
IRWIN W. COLEMAN,
STONE WELLS,
W. H. WATKINS, SR.,
P. H. EAGER, JR.,
GARNER W. GREEN, SR.,
Attorneys for Respondents.

WILBOURN & WILBOURN,
Meridian, Mississippi;
WELCH, COOPER & WELCH,
Laurel, Mississippi;
WATKINS & EAGER,
Jackson, Mississippi;
GREEN & GREEN,
Jackson, Mississippi.

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Respondents

Now comes the Gulf Refining Company, a corporation, L. E. Ridgway, et al., enumerated in the answer and cross bill as the "Ridgway group" and so herein designated, and for answer to the application of the petitioners to proceed herein without complying with the rules as to printing the record, respectfully say:

A

The judgment in the Supreme Court was adverse to petitioners, who had given an appeal bond with sureties as Lamar F. Easterling, George E. Shaw, Lester C. Franklin, Lester E. Wills and Ben F. Cameron. The judgment in the State Supreme Court, as to costs, was against petitioners and said sureties. Said sureties did not join in this appeal. Compare *Hartford Accident & Indemnity Company* v. *Bunn*, 285 U. S. 169, 76 L. Ed. 685. As this appeal was from a State Court, Rule 74, probably is not applicable and it is ques-

tioned whether any appeal has been taken as the judgment became final May 19, 1947.

B

1. Respondents respectfully suggest that the printing of the record as by Rules required will not, when modified in accordance with proposed stipulations as assented to by respondents, impose any extreme hardship.

2. Petitioners should not be herein permitted to proceed in *forma pauperis*, if for no other reason than that the respondents have paid in actual cash to petitioner for protective leases in this litigation $56,000.00.

3. On August 21, 1947, these respondents received:

(a) A certain stipulation document reciting certain facts, whereto reference is made.

(b) Petition for Certiorari with a brief in support thereof.

(c) An Appendix to Petition for Certiorari.

Respondents aver upon information that petitioners are in default for not printing the record as required by the Rules of this Court and upon such default respondents specifically desire to rely, with this qualification: Respondents are informed that this application for Certiorari is groundless and is made for purposes of delay and that the Gulf Refining Company has retained royalty payments as at the present time aggregating many thousand dollars, and the Tidewater Associated Oil Company has as to similar royalty as at the present time done the like, which royalties are held up solely in virtue of these proceedings, and that thereasto respondents, other than the Gulf Refining Company and Tidewater Associated Oil Company, respectfully suggest that penalties are imposable under Rule 30 of

this Court and these respondents do not desire any delay whatsoever to occur in the consideration of this application for Certiorari, which they aver, upon information, is wholly groundless.

4. Subject to the foregoing, respondents respectfully say that they received in due course of mail Exhibit "A" hereto from petitioners setting forth specifically that which should be printed.

5. After due consultation, these respondents thereto made response to said petitioners as shown by Exhibit "B" hereto annexed and made part hereof as if fully copied herein, filing the same with the Clerk of the Supreme Court of Mississippi, and respondents say that they are advised that in order to accurately present this case to this Court the matters aforementioned are requisite and necessary and that without them this Court may not give to this cause that attention which its importance demands.

6. Respondents say that on the 10th day of June, 1944, petitioners impetrated this suit in the Chancery Court of Jasper County, First District, Mississippi, therein filing the original bill. Thereafter these respondents and others made parties thereto, more than 100 in number, answered and filed cross bills.

7. That upon the 15th day of December, 1944, the first protective lease, so-called, was executed containing this express provision:

> "* * * And, further, notwithstanding any provisions of this lease apparently to the contrary, it is agreed and understood that Lessor shall not be entitled to and Lessee shall be under no obligation to pay to Lessor any of the royalties, or any part thereof, provided for herein unless and until in the suit entitled N. L. Hudson, et al., complainants, vs. The Gulf Refining Company, et al., defendants, No. 398, Chancery

> Court for the First Judicial District, Jasper County, Mississippi, lessor shall have established by a compromise settlement between the parties thereto, or by final decree of the court therein, that the lessor herein is the owner of the lands and minerals hereby leased and involved in said suit or the owner of an interest therein."

8. Thereafter, about June, 1945, additional counsel were retained by petitioners and shortly thereafter the idea of transferring this litigation from the State Court to the District Court was initiated, counsel for petitioners, being thereasto fully examined in Cause No. 270, et al., in the District Court, and went so far as to recast a deed made to the first counsel for petitioners on the ground that inadvertently the land was conveyed to counsel when it was intended only to convey them a proportionate participation in the proceeds.

9. Thereafter, on December 11, 1945, these four suits, *Hudson* v. *Newell,* No. 270; *Hudson* v. *Lewis,* No. 271; *Hudson* v. *Windham,* No. 272; and *Hudson* v. *Jones,* No. 278 (this last, however, filed on January 15, 1946), were assumed to be filed in the District Court involving precisely the same land but covering only 340 acres, omitting the 20 acres whose ownership was so widely held by citizens of the same States as that it was impossible to initiate this suit. As to the other three suits, the petitioners consciously omitted all residents of Louisiana and Texas and after full argument upon the 24th day of April, 1946, District Judge Mize overruled these motions to dismiss, assuming that he could by his decree confine them to those persons who were validly before his court without affecting the rights of those persons who had been consciously omitted by petitioners.

10. Respondents called attention to *Veal* v. *Thompson*, 138 Tex. 341, 159 S. W. 2d 472, wherein the effect of unitization upon mineral ownership is adjudged. Mississippi has almost uniformly followed the Texas decisions. Compare *Stokely* v. *State*, 149 Miss. 435, 115 So. 563; *Merrill Engineering Co.* v. *Capital National Bank*, 192 Miss. 378, 5 So. 2d 666; *Koenig* v. *Calcote*, —— Miss. ——, 25 So. 2d 763.

11. After the rendition of this ruling by Judge Mize, the Circuit Court of Appeals of the Fifth Circuit decided *Keegan* v. *Humble Oil & Refining Co.*, 155 Fed. 2d 971, on June 13, 1946, rehearing denied July 23, 1946, and specifically approved the Texas rule as to indispensable parties under unitization agreements.

12. The Circuit Court of Appeals reversed Judge Mize in *Calcote* v. *Texas Pacific Coal & Oil Co.*, decided July 31, 1946, 157 Fed. 2d 216, Certiorari denied November 18, 1946, 328 U. S. (No. 1) 29, 91 L. Ed. 80, Rehearing denied December 9, 1946, 328 U. S. (No. 1), 30, 91 L. Ed. 242, showing the absolute want of jurisdiction in the Federal Court in a diversity suit involving, if you please, a reformation of a contract whereunder all parties participating in the ownership were uniformly bound without making those parties who were citizens of Louisiana and Texas parties thereto in any way.

13. Thereupon, with Cause No. 398 in the Chancery Court of Jasper County still pending, these four Federal suits were filed as aforesaid, and thereupon on December 12, 1945, before the Clerk of the Chancery Court of Jasper County, in vacation, pursuant to Section 1539, Mississippi Code of 1942, petitioners made a motion to dismiss in vacation without paying the costs accrued to that date and without assigning any reason whatsoever therefor, especially naught as to alleged threats.

14. Petitioners did not take an order before the Clerk in vacation but parties being interested got notice thereof and objected especially the royalty owners whose responses thereto in part are fairly stated in the Appendix 30-41, and may be epitomized thus:

(a) These respondents under these protective leases had obtained in the prosecution of Cause No. 398 certain rights substantially as by decretal order of which petitioners as complainants could not deprive them.

(b) As to the Gulf Refining Company and the Ridgway group, cross bills had been interposed and to the Gulf's cross bill a demurrer had been filed. As to the Ridgway group cross bill, when petitioners moved to dismiss the entire suit, of necessity there was thereby appearance entered to this cross bill, there being no such things in Mississippi as "special appearances". Compare *McCoy* v. *Watson*, 153 Miss. 416, 121 So. 116; *Afro-American Sons and Daughters* v. *Webster*, 172 Miss. 602, 161 So. 318.

(c) In addition, in the State court it was not denied by Judge Easterling that due process of service of the Ridgway group cross bill was made on him, his comments on such practice being embodied in Exhibit "C" hereto appended.

(d) No response to this motion for dismissal under Mississippi practice was required. Compare *Hudson* v. *Gulf Refining Co.*, — Miss. —, 30 So. 2d 66; *Griffith's Chancery Practice*, Sec. 407; *Reed* v. *State*, 143 Miss. 686, 109 So. 715; *Martin* v. *Board of Supervisors*, 181 Miss. 363, 178 So. 315; *Hall* v. *Franklin*, 814 Miss. 77, 185 So. 591.

(e) The hearing on this motion was then had without objection by petitioners at the January Term of the Chancery Court, no pretense as to any threats being then made. Appendix 41-63.

(f) Thereafter the Chancellor, in vacation, entered his decree. Appendix 63.

(g) Therefrom, petitioners endeavored to appeal to the Supreme Court of the State of Mississippi and try the cause piecemeal and one Judge of the Supreme Court, with concurrence of others, declined to take jurisdiction. No record of any alleged threats at this time. Thereupon, the Chancellor called a special term of the Jasper County Court for the trial of all cases—not the *Hudson* case in particular—and the Chancellor for reasons to these respondents wholly unknown assumed to write a confidential letter which appears in Appendix page 63. In response thereto, these respondents say:

(a) On the oath of these solicitors there were no threats of any kind or character by their several clients and as to the others they have no knowledge that there were any such and they desired then and desire now flatly to challenge, first, the making, and, second, the effect, if any, of such alleged threats, protesting vigorously that none such occurred, but if they did, then

(b) Petitioners did not plead these threats in Cause No. 398.

(c) Petitioners did not allege the nature of such alleged threats, nor by whom same were made, nor did petitioners set up the language of any specific threat, nor attempt to prove any alleged threats in Cause No. 398.

(d) Under Mississippi practice personal knowledge of the Chancellor may not be integrated into the record. *Armstrong* v. *Jones,* 198 Miss. 627, 22 So. 2d 7, holding the principle of law beginning with *Smith* v. *Moore,* 3 How. 40, precluded any judge from assuming to act on any information alleged to be personally possessed, but Judge Neville

did not say that he possessed personally this information.

If these respondents had made those threats as to any counsel of petitioners and petitioners had proved those threats before Judge Neville, then there would have been such evidence as would have authorized Judge Neville to have acted thereon, but there was no such proof offered before or submitted to the trial Court. Compare 31 C. J. S., p. 880, Sec. 179; 62 A. L. R. 136.

But in no sense would it have made it a Federal question, because the State did naught thereasto. In the precisely similar case of *Moore* v. *Pate,* 39 Fed. 2d 616, certiorari denied 282 U. S. 853, 78 L. Ed. 755, Mr. Hirsch, without challenge as to accuracy, declared:

> "Why Mr. Pate went so far as to say in open court—in the State court while this matter was pending in the District Court that if Moore won this property by decree of the court he would kill appellant's attorney, Redmond."

And yet the Court of Appeals held the State judgment *res adjudicata* with certiorari denied.

15. But when the May Term came, there likewise appeared counsel for petitioners and when they were in open court there was a colloquy between court and counsel thus recorded (Appendix, 75):

> "I understand you all agree it is not necessary to enter any order on the allegations in the exceptions with reference to the threats, that this Court cannot protect its litigants and solicitors.
>
> "I will proceed with the trial of the case."

And respondents say that there were no deputies then present and everything at that term was as quiet as could be, and insofar as the certified record shows, no entry was ever made of record on the minutes of the Court as to this matter.

16. At that term, petitioners appeared and interposed an objection, Appendix, 64, predicated upon possibly three separate grounds:

(a) The absolute right to dismiss.

(b) A totally insufficient pretense as to threats reading thus:

> "Said District Court of the United States is, as aforesaid, proceeding with the trial of said issues, and is ready and able to proceed with such trial free of any atmosphere of threats or intimidation or oppression, and under such circumstances that the witnesses and all who engage in the trial may perform their respective parts without fear of violence, and without intimidation or oppression." (Appendix, 69).

(c) Pendency of Federal Court actions precluding State Court's assertion of jurisdiction and they then asked that no order be thereon entered, indicating at that time that they had no desire whatsoever to make a record other than to direct attention to the pendency of the Federal Court suits.

17. But being advised that the Court had assembled to hear this case, they consciously withdrew and after they had so done, in the final decree, Judge Neville specifically found (Appendix, 76):

> "* * * and there being no motion for or grounds for a continuance of the said cause, announced that the trial thereof should proceed * * *."

Thereupon, appeal was assumed to be had and the action of the Chancery Court was assailed in the Supreme Court by an assignment of errors containing nine grounds, Appendix 79, all of which obviously were without merit as Federal questions, and relate exclusively, with deference, to State questions, and then as a conclusion there is a vague ref-

erence to the Federal Constitution substantially predicated upon the ground that an erroneous decision by a State Court between private litigants under State law is a deprivation of property and a denial of the equal protection under the Fourteenth Amendment.

18. Thereupon, after full argument, the Supreme Court of Mississippi affirmed the decree of the Chancery Court and an analysis of this opinion shows:

(a) That done, through and including the words:

> "The answer and cross-bill of Gulf Refining Company was filed on September 16, 1944, and those of the other twenty-five cross-complainants on September 30, 1944. On December 12, 1945, the complainants filed a motion to dismiss their original bill aforesaid without prejudice, which motion was actively resisted by numerous of the original defendants, and the motion was overruled."

It was a statement of the case.

(b) Then Justice Smith said (Appendix, 84):

> "Had there been no cross-bills, it may have been that the complainants would have had the right to dismiss, as they sought to do, but leaving that question aside for the moment, we are of the opinion that they had no right to do so and at the same time secure the dismissals of the cross-bills, unless by the consent, express or implied, of the cross-complainants."

Thereafter, without passing upon the other issues interposed, Mr. Justice Smith dealt solely with the State issue as to the effect of the cross bill and confined, substantially, his opinion to that one aspect, determining that aspect adequate for a decision of the cause. He did not undertake to determine any other question, either Federal or State.

(c) Note (Appendix, 87):

> "We are of the opinion, therefore, that the court was correct in not dismissing the cross-bills, and in proceeding to a final hearing on them, without the attendance of cross-defendants, who purposely absented themselves; * * *."

Then, having discussed solely the effect of the retention of the cross bill under Mississippi practice and the right under Mississippi practice to have an adjudication against the persons who wilfully absented themselves from Court, we have

(d) The conclusion of Mr. Justice Smith that he would not consider the other aspects but would predicate the affirmance of the judgment solely upon the right under Mississippi practice under a cross bill retained in a case where the petitioners abandoned the court.

19. The Chancery Court, when these parties withdrew protesting they would not further act, proceeded to hear evidence establishing that petitioners had absolutely no title. The plaintiffs being non-residents and having thus done, it would have been competent for Mississippi to have authorized the bill to have been dismissed and final judgment rendered against them for failing to answer. Compare *Hammond Packing Co.* v. *State of Arkansas,* 212 U. S. 322, 53 L. ed. 530; Annotation, 144 A. L. R. 372; *Equitable Life Assurance Society* v. *Clark,* 80 Miss. 471, 31 So. 964; *Illinois Central R. Co.* v. *Sanford,* 75 Miss. 862, 23 So. 355, 942, approved in the *Hammond* case directly.

Therefore, upon the line of demarkation between due process under *Hovey* v. *Elliott,* 167 U. S. 409, 42 L. Ed. 215, and that authorized by the statute, the Chancellor permitted this evidence to come before him to find out what really were the facts and especially to be fully advised as there were

rights of minors, and having found, the facts are unquestionably in favor of the respondents. Therefrom, it appeared that a public record had been made showing an absolute title from N. L. Hudson to Mary E. Hudson, Appendix, 83. It further appeared that every attorney who was familiar with these records was put on the stand and testified in the District Court proceedings at the instance of the Hudsons and in this hearing at the instance of the respondents and all showed the title in fee simple with no life estate. Opinon of the Supreme Court of Mississippi, Appendix 83:

> "* * * Hudson had made to his wife, M. E. Hudson, on January 23, 1880, a deed to the lands in fee simple absolute, this deed being recorded in Book 20, page 135 of the records of deeds of the county. * * *."

Under these facts, with deference, we submit that the full record should be printed so as that the factual background could be made clear and therefrom demonstrated that the decision of the Chancellor was strictly on local questions, the affirmance strictly on local questions by the Supreme Court with the recitation that one local question was thereasto adequate.

So that, if this matter is to be presented to this Court, we submit that each of these additional items should be printed as a part of the record so that this Court might see, both from the original record and from the suggestion of error, which was overruled, that the State Court had ample ground upon which to base its finding and, with deference, there is no authority thus to allow petitioners so circumstanced to appeal without presenting to the court the entire transaction with its full factual background, there being, with deference, here no hardship as to the stipulated portions of the record, counsel for petitioners having initially conceded that substantially all that herein contended for

was essential and having changed his mind after the initial proposed stipulation was submitted. With deference, there is no valid reason therefor and petitioners predicate their right of recovery upon an alleged deed from N. L. Hudson to his wife allegedly executed about 1880. All of the records in Jasper County were destroyed September 10, 1932, but respondents claim under a deed not in their possession, not of record and of which they had no copy, that N. L. Hudson, who died about 1895, had conveyed a life estate to his wife, Mary E. Hudson, and that at her death, which occurred in 1928, the title vested in the heirs at law of N. L. Hudson, as purchasers and that the statute of limitation did not run by reason of this condition, it being conceded that those under whom respondents claim have been in possession since approximately 1900 under deeds conveying to them the absolute title. Compare as to the statute of limitations, *Peeples* v. *Boykin,* 132 Miss. 359, 96 So. 177, which question the Supreme Court of Mississippi could have determined in favor of respondents but presumptively if the jurisdiction is transferred to the District Court, that Court would have been precluded from this doing. Compare *Edward Hines Yellow Pine Trustees* v. *Martin,* 268 U. S. 458, 69 L. Ed. 1050.

Upon behalf of these respondents, we protest vigorously but seek no delay.

In due time, without foregoing respondents' rights hereunder, response will be made to the petition for certiorari and the brief thereon.

Respectfully submitted,

R. E. WILBOURN,
WALTER S. WELCH,
IRWIN W. COLEMAN,
STONE WELLS,
W. H. WATKINS, SR.,
P. H. EAGER, JR.
GARNER W. GREEN, SR.,
Attorneys for Respondents.

WILBOURN & WILBOURN,
Meridian, Mississippi;
WELCH, COOPER & WELCH,
Laurel, Mississippi;
WATKINS & EAGER,
Jackson, Mississippi;
GREEN & GREEN,
Jackson, Mississippi.

EXHIBIT A

Copy

June 13, 1947.

No. 36,406

N. L. HUDSON, et al.

v.

GULF REFINING Co., et al.

Mr. I. W. Coleman, Messrs. Stevens & Stevens, Messrs. Watkins & Eager, Messrs. Wells, Wells, Newman & Thomas, Messrs. Green & Green, Jackson, Mississippi.
Messrs. Wilbourn, Miller & Wilbourn, Meridian, Mississippi.
Messrs. Welch & Cooper, Mr. J. R. Buchanan, Mr. A. S. Scott, Messrs. Beard & Pack, Mr. Larry Pacific, Laurel, Mississippi.
Mr. F. C. Hathorn, Sr., Hattiesburg, Mississippi.

GENTLEMEN:

Complainants in the court below, N. L. Hudson, et al., will apply to the Supreme Court of the United States for a certiorari and/or appeal from the decision of the Supreme Court of Mississippi. Under Rule 38, subdivision 8, of the Rules of the Supreme Court of the United States and other provisions of those rules, the attorneys for the litigants are required to stipulate to omit from the printed record all matter not essential to a consideration of the questions presented by the petition or appeal. To that end I have prepared, and am sending herewith, a stipulation of the portions of the record to be certified by the Clerk of the Supreme Court of Mississippi. I hope, and believe, that everything essential is covered, and that indeed quite a little more may be omitted. I shall be glad to join in omitting such other parts as you gentlemen may think non-essential.

I will greatly appreciate it if you will sign this stipulation if you find it proper. At all events, kindly let me hear from you at the earliest possible date so that we may get our proceedings under way.

Yours sincerely, Ben F. Cameron.

C:E. enc.

SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 36,406

N. L. HUDSON, et al., Appellants,

v.

GULF REFINING COMPANY, et al., Appellees

STIPULATION COVERING RECORD TO THE SUPREME COURT OF THE UNITED STATES

It is hereby stipulated and agreed between the attorneys representing the parties to the above styled action that the Clerk of the Supreme Court of Mississippi shall copy and certify the following papers and documents, together with all exhibits thereto, on file as a part of the record in the Supreme Court of Mississippi, and that said documents, together with the stipulation following their enumeration, shall constitute the entire record in the Supreme Court of the United States, to-wit:

Bill of Complaint	1
Amendment to Bill of Complaint	441
Motion of Complainant to Inspect Books of Gulf	471
Second Amendment to Bill of Complaint	550
Motion of Claudies Newell, et al to Stay Proceedings	119
Answer of Mason Newell, et al	175
Answer of T. D. Lewis, et al	204
Answer of Carrie Kelly Husband, et al	242
Supplemental Answer of T. D. Lewis, et al	257
Answer and Cross-Bill of Gulf Refining Company	271
Answer of P. R. Bethea, et al	401
Answer of C. R. Ridgway, et al	452
Supplemental Answer of P. R. Bethea, et al	462
Answer of Tidewater Associated Oil Co.	465
Answer of Gulf Refining Co. to Motion to Inspect Books	524
Answer of Cora B. Bradford, et al	557

Answer of Thomas Melvin Lewis	588
Motion of Lucius Cook Lewis, et al	594
Decree thereon	596
Demurrer of Complainants to Cross-Bill of Gulf Refining Co.	398
Motion of Complainants to Dismiss Without Prejudice	605
Answer of Defendants Lewis, et al, to Motion to Dismiss	606
Answer of Cora B. Myers, et al to Motion to Dismiss	661
Answer of George J. Leiderman, et al. to Motion to Dismiss	678
Supplemental Answer of T. D. Lewis, et al. to Motion to Dismiss	695
Answer and objection of —— to Non-Suit by Complainants	713
Transcript of Evidence on Hearing of Motion to Dismiss, appearing as pages	753–852
Reply of Complainants to Answer of Defendants on Motion to Dismiss	708
Order taking Motion to Dismiss under Advisement	707
Order overruling Complainants' Motion to Dismiss Without Prejudice	721
Application of Complainants for interlocutory appeal	722
Order Denying Interlocutory Appeal	723
Order Calling Special Term of Court for May 6, 1946	
Objection of Complainants to Hearing Cause	724
Transcript of Evidence at Special Term Until Withdrawal of Complainants	854–859
Final Decree	749–A
Order Adjourning Special Term	
Petition for Appeal	750
Appeal Bonds	
Assignment of Errors by Appellants	
Order of Supreme Court of Mississippi entered April 21, 1947, Affirming the decree of the Chancery Court of Jasper County	

Opinion of Supreme Court of Mississippi....
Motions of Appellants that Suggestion of Error be Heard by Court In Banc.....
Order of Supreme Court Entered May 12, 1947 Overruling Motion for Hearing In Banc....
Order of Supreme Court of Mississippi of May 19, 1947 Overruling Suggestion of Error
Order of Supreme Court of Mississippi of June 2, 1947 Overruling Motion to correct Judgment
All other orders of Supreme Court of Mississippi which may be entered subsequent to the foregoing Orders and before the transcript is completed and certified .....

It is further stipulated that the following answers were filed by defendants claiming to own mineral interests through certain of the defendants claiming the fee, the dates of the filing and the pages of the record being shown in each instance, and the Clerk is requested to copy the names of all such defendants so filing answers:

		Page
9-4-44	Answer of George J. Leiderman.....	146
9-7-44	Answer of Mrs. Mamie M. Abney.....	230
9-8-44	Answer of John F. Riddell and others.....	264
9-8-44	Answer of Carl B. Anderson, Jr., et al.....	266
9-22-44	Answer of Defendants, S. J. Hooper and H. A. Smith	336
10-3-44	Answer of Joseph M. Perkins, et al.....	405
1-18-45	Answer of Claud B. Hamill, et al.....	450
1-12-46	Answer of Florence H. Abney, et al.....	640

It is further stipulated that said answers relied on the same facts and points of law as those of the defendants copied in the record pursuant to this stipulation, and no more, and that said answers did not contain any cross-bill or any prayer for affirmative relief.

It is further stipulated that all of the answers and responsive pleadings filed by any defendant to complainants' Motion to Dismiss Without Prejudice are set forth in the record in full, together with exhibits, and that defendant,

Gulf Refining Company, did not file any answer or responsive pleading to Complainants' Motion to Dismiss Without Prejudice.

Witness the signatures of the parties by their attorneys of record this — day of June, 1947.

BEN F. CAMERON,
Attorneys for Appellants,
N. L. Hudson, et al.

——— ———,
Attorneys for Appellees in the Supreme Court of Mississippi as indicated.

EXHIBIT B

July 18, 1947.

Mr. Ben F. Cameron
Cameron & Wills
Meridian, Mississippi
Dear Mr. Cameron:

In Re: Hudson vs. Gulf Refining Company
Certiorari to Supreme Court

Pursuant to a conference had between the attorneys for Gulf Refining Company and the Ridgway Group, we are willing to stipulate as to the record before the Supreme Court of the United States, and so far as the above parties are concerned, it is quite essential, from their viewpoint, that to satisfy their requirements, the following should be made a part of this record on appeal. You may stipulate with any other person for any other portion of the record that you and they may desire, and its inclusion or exclusion, so far as these parties are concerned, is immaterial and a matter solely for you and them.

	Record Page
Bill of Complaint	1
Amendment to Bill of Complaint	441
Motion of Complainant to Inspect Books of Gulf	471
Order of Court on such Motion	
Second Amendment to Bill of Complaint	550

	Record Page
Answer and Cross Bill of Gulf Refining Co.	271
Answer and Cross Bill, C. R. Ridgway, et al.	
Answer of Gulf to Motion to Inspect Books	524
Order extending time within which the Cross Bill of Gulf Refining Company might be responded to	
Demurrer of Complainants to Cross Bill of Gulf Ref.	398
Motion of Complainants to Dismiss Without Prejudice	605
Answer of Defendants Lewis, et al., to Motion to Dismiss	606
Answer, Cora B. Myers, et al., Motion to Dismiss	661
Answer, George J. Leiderman, et al., Motion to Dismiss	678
Supplemental Answer, T. D. Lewis et al., Motion to Dismiss	695
Answer and objection Jettie Kelly Windham to Non-Suit by Complainants	713
Transcript of Evidence on Hearing of Motion to Dismiss. (This may be epitomized, if desired), appearing pages	753–852
Reply of Complainants to Answer of Defendants on Motion to Dismiss	708
Order taking Motion to Dismiss under advisement	707
Order overruling Complainants' Motion to Dismiss Without Prejudice	721
Application of Complainants for Interlocutory Appeal	722
Order denying Interlocutory Appeal	723
Order calling Special Term of Court for May 6, 1946	
Objection of Complainants to Hearing Cause	724
Transcript of Evidence at Special Term until Withdrawal of Complainants	854–859

and the following stipulation, so far as these parties are concerned:

After Complainants' attorneys assumed to withdraw, The Gulf Refining Company, the Ridgway Group (embrac-

ing all of those parties named in the Ridgway answer and cross-bill), and the other named defendants, caused to be introduced before the Chanceller certain oral and documentary evidence, wherefrom it might be correctly found, both as a matter of law and of fact, if believed, that Mary E. Hudson, the wife of N. L. Hudson, and Mother of complainants, assumed to convey in fee simple to each of the persons claiming under and through her, and that these persons and their successors in title have been in the open, notorious, exclusive and adverse possession of said land, in accordance with their several deeds, claiming the same as their own. They farmed this land, cut timber therefrom, constructed buildings thereon, paid the taxes thereon, and there was no interference with said use and occupation until the bill was filed in this cause, No. 398. Such possession and claim of such parties to said lands was continuous for more than 10 years prior to the filing of the bill in said cause No. 398.

There were introduced as witnesses, Madison Travis, J. A. McFarland and Henry L. Finch, all practicing attorneys, who are the sole attorneys up to this date introduced by Complainants in the District Court of the United States for the Eastern Division of the Southern District of Mississippi, in those certain suits therein numbered and styled:

#270 Hudson v. Newell, et al.
#271 Hudson v. Lewis, et al.
#272 Hudson v. Windham, et al.
#278 Hudson v. Jones, et al.

who swore both in their depositions taken in the United States District Court cases at the instance of plaintiff and on the trial in cause No. 398, that the records at the county seat, Paulding, which had been destroyed by fire on September 10, 1932, precedently contained an absolute conveyance in fee from N. L. Hudson to Mary E. Hudson, and that Mary E. Hudson did not take any life estate. There is presently of record, duly established and recorded pursuant to Sections 762, 763 and 764, Mississippi Code of 1942, one of these abstracts made by the said Madison Travis, which is to be, insofar as these conveyances by N. L. Hudson to Mary E. Hudson, copied in full.

Jasper County, Mississippi, prior to the discovery of oil, had very few lawyers resident, and the foregoing Travis, Finch and McFarland are, so far as known, the sole persons who, as attorneys, were acquainted with these records who are presently alive and available.

The Gulf Refining Company took leases from each of the separate landowners and placed the same of record in the year 1937 and before any oil field had been developed in Mississippi.

If the substance of the foregoing may not be agreed on, the actual testimony may be epitomized and condensed, with elimination of irrelevant and inconsequential portions.

Final Decree 749-A
Order Adjourning Special Term.....
Petition for Appeal 750
Assignment of Errors by Appellants.....
Order of Supreme Court of Mississippi entered April 21, 1947, affirming decree of the Chancery Court of Jasper County .....
Opinion of Supreme Court of Mississippi.....
Motions of Appellants that Suggestion of Error be heard by Court In Banc .....
Suggestion of Error .....
Order of Supreme Court entered May 12, 1947, Overruling Motion for Hearing In Banc.....
Order of Supreme Court of Mississippi of May 19, 1947, Overruling Suggestion of Error.....
Order of Supreme Court of Mississippi of June 2, 1947, Overruling Motion to Correct Judgment..
All other orders of Supreme Court of Mississippi which may be entered subsequent to foregoing Orders and before the Transcript is completed and certified.....
Appropriate Appellate proceedings to the Supreme Court of United States.....

It is stipulated that the defendant, Gulf Refining Company, did not file any answer or responsive pleading to Complainants Motion to Dismiss without Prejudice. There was no pleading filed by complainants, except insofar as the

record above set forth shows, predicating any right of relief upon any threats of any kind or character, and complainants did not introduce any evidence of any threats of any kind or character whatsoever, except as expressly set out in this stipulated record. At the hearing at the May Term, 1946, no reference whatsoever was made to any threats in open Court by any person other than set forth in complainants' objection. There were no armed deputies present. There was no searching of any person for weapons, and the proceedings had in the Chancery Court were quiet, orderly, and possessed all the essential judicial requisites as to decorum.

Yours truly,

GREEN AND GREEN,
By —— ——.

EXHIBIT C

December 7, 1944.

JUDGE LAMAR EASTERLING
Deposit Guaranty Bank Bldg.
Jackson, Mississippi.

Re: Hudson v. *Gulf Refining Company*

DEAR JUDGE:

This will confirm conversation had with you over the telephone this morning relative to the above titled cause, in which you said that substantially the reason you demurred to our cross-bill was that you didn't want to go to the trouble of writing an answer. Of course, we have no desire to put you to unnecessary trouble, but we didn't want to have a delayed hearing when the matter came up because, frankly, our witnesses are going to be numerous and expensive.

In answer to this you made the statement that, if we went to trial, as was, and the Court held that the Hudson's

were not entitled to any relief, then, of course, our people would be entitled under that to hold to their lease and it would be quite immaterial to you what happened further, and that you would go to the extent in that case, after the decree became final, of giving us a quit-claim.

Under these circumstances, my thought is that there is no necessity for any argument on this demurrer, but try the case on its merits. If we win, then we can write the decree and, if we lose, there won't be anything to confirm, so that it thus becomes rather immaterial as to what happens on the demurrer, whether it be overruled or sustained, and we can pass it according to the merits and let the decree take care of the rights of the respective parties.

With kindest regards.

Yours very truly,

GARNER W. GREEN.

GWG:E.

cc R. E. Wilbourn, W. S. Welch, Judge Atkinson.

SUPREME COURT OF THE UNITED STATES

No. 262

N. L. HUDSON, et al., *Petitioners,*

v.

GULF REFINING COMPANY, et al., *Respondents*

Now come Talmadge D. Lewis, his wife Annie Lewis, and members of their family; Cora B. Myers Bradford, individually and as guardian for her children, Clifton Myers, Simon Myers, and James Myers; Mason Newell, individually and as guardian for Alfonso Newell, Juanita Newell, and Mason Newell, Jr., minors, and Claudies Newell and Paul Ellis Newell; and George J. Leiderman, some of the respondents in the above styled cause and for brevity adopt the answer of the Gulf Refining Company and the Ridgway group to the application of petitioners to dispense

with the printing of the record; and hereby respectfully supplement said answer, so far as the interest of these respondents is concerned, by the following to-wit:

Respondents other than the Talmadge D. Lewis family as above named are represented by J. R. Buchanan, Attorney at Laurel, Mississippi. Talmadge D. Lewis, his wife, and family are jointly represented by said Buchanan and by the undersigned J. Morgan Stevens of Jackson, Mississippi. These respondents made response to the proposed stipulation made Exhibit A to the answer of the Gulf and Ridgway group and on behalf of his clients J. R. Buchanan made a counter-proposal to the Honorable Ben F. Cameron, leading attorney for petitioners, with reference to the abridgement of the record. Said counter-proposal being shown in a letter dated July 22, 1947, copy of which is hereto attached as Exhibit No. 1. J. Morgan Stevens, through his law firm, Stevens and Cannada, made a similar counter-proposal to said Ben F. Cameron as reflected by copy of letter of July 23, 1947, attached hereto as Exhibit No. 2. No written response was made by said Cameron to either of the letters so written by the attorneys for these respondents, but these attorneys were advised on the telephone by said Ben F. Cameron that he could not agree to the counter-proposals and had directed the clerk to certify a copy of the entire record. The counter-proposals would eliminate all of the oral and documentary testimony taken upon the final trial of this case in the Chancery Court of the First Judicial District of Jasper County, provided the agreements outlined in said letters were approved.

Respecfully submitted,

J. Morgan Stevens,
J. R. Buchanan.

BUCHANAN & MONTGOMERY
Attorneys-at-Law
215 First National Bank Building
Laurel, Mississippi

July 22, 1947.

J. R. Buchanan
Goode Montgomery, Jr.

Hon. Ben F. Cameron
Cameron & Wills
Attorneys at Law
Jackson, Mississippi

Inre: N. L. Hudson et al. vs. Gulf Refining Co. et al.,
No. 36,406

DEAR MR. CAMERON:

I have read the letter of Green & Green, addressed to you, under date of July 18, 1947, listing the matters to be stipulated on your proposed motion for certiorari.

I approve all of the suggestions made by Green & Green, but would suggest that there should also be added the following two paragraphs:

"That all of the defendants, including those who did not file cross-bills, appeared at the Special May, 1946, term of Court, represented by counsel and actively participated in the hearing of the cause No. 398 on the merits.

"That the defendants, Paul Ellis Newell and Claudies Newell, on whose behalf there had been theretofore filed motions to stay proceedings under the Soldiers and Sailors Civil Relief Act, appeared at the January, 1946, term of Court in said cause, by their attorneys, and announced ready for trial, and requested that the Court proceed with the trial of said cause on its merits; that no decree was entered by the Court on said motion and filed on behalf of the said defendants, Claudies Newell and Paul Ellis Newell."

I must also insist that the answer of George J. Leiderman be copied in the Record in full, together with the answers

of the other defendants. I do not think that a stipulation would be complete unless it includes all of the pleadings filed by all of the parties. I will be willing to sign the stipulation, provided it includes the items set forth in the original proposed stipulation offered by you, with the changes suggested by Messrs. Green & Green and Mr. R. E. Wilbourn, and the changes suggested in this letter.

With best wishes, I am

Sincerely yours,

(S.) J. R. BUCHANAN.

JRB:ebg.

cc. Stevens & Cannada; Wells, Wells, Newman & Thomas; Green & Green, Irvin W. Coleman, R. E. Wilbourn, Welch, Cooper & Welch.

STEVENS AND CANNADA
Attorneys and Counsellors at Law
623-25 Standard Life Building
Jackson, Mississippi

July 23, 1947.

MR. BEN F. CAMERON, Attorney at Law
c/o Cameron and Wills
Meridian, Mississippi

DEAR MR. CAMERON:

Re: N. L. Hudson, et al. vs. Gulf Refining Company, et al.
No. 36,406

Reference is made to your communication of June 13, 1947, addressed to all counsel, proposing stipulation covering the record to the Supreme Court of the United States, and reference is, also, made to the letter of Green and Green to you under date of July 18, 1947, and to the letter of my associate, Mr. J. R. Buchanan, to you of July 22, 1947. With the exception of one further addition to the Transcript, subsequently noted, I approve the statement and

conclusion of Mr. J. R. Buchanan in his letter to you of the 22nd, with this possible exception.

If you expect to undertake to predicate error on account of the Soldiers and Sailors Civil Relief Act, and if you expect to bring forward the point which you left-handedly stated at the top of Page 8 of your recent affidavit and resistance to our motion for summary judgment in the Federal Court proceeding to the effect that some of the defendants suggested to the state court that Thomas Melvin Lewis was claimed by some of the defendants to be serving in the armed forces of the United States beyond the continental limits of the United States of America and claiming rights based under the Soldiers and Sailors Civil Relief Act of 1940, then we would like to have you stipulate in addition to the paragraph dictated by Mr. Buchanan with reference to the Newells, the following:

> "Thomas Melvin Lewis, at one time a member of the armed forces of the United States, was discharged from the Army and filed his separate answer herein, and furthermore, was appointed guardian of the minor defendants of the Lewis family, and filed a supplemental answer on behalf of said minors prior to the filing of the motion to dismiss, and joined his co-defendants in filing objections to the dismissal of the case and insisting upon a trial thereof on the merits."

If you do not expect to predicate error on this point than it would be useless to add the foregoing stipulation. As I stated to you personally at Gulfport recently, it is difficult to stipulate the record when we do not yet know what your proposed assignments of error are or will be.

With kind regards,

Yours very truly,

STEVENS AND CANNADA,
By —— ——,

JMS/mes.

cc: Mr. J. R. Buchanan, Messrs. Green and Green, Messrs. Wells, Wells, Newman and Thomas, Mr. A. S. Scott, Mr. Irwin W. Coleman, Mr. R. E. Wilbourn, Messrs. Welch, Cooper and Welch.

P. S.—We are requested by Major Wells, for his firm, to state that he approves the foregoing letter, so far as his clients are concerned.